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December 21, 2011

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**BY E-FILING**

Ms. Cynthia A. Brown  
Chief Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, N.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

DEC 22 2011

Part of  
Public Record

**RE: FD 35559, Saratoga And North Creek Railway, LLC-Operation  
Exemption-Tahawus Line**

Dear Ms. Brown:

I am writing on behalf of Saratoga And North Creek Railway, LLC ("Saratoga"), in connection with Protect the Adirondacks! ("Protect") Reply to Saratoga's Appeal to the Acting Director's decision. Saratoga received by email this afternoon a copy of Protect's Reply that will be submitted to the Board by overnight mail tomorrow.

Appeals of decisions by the Director of the Office of Proceedings are governed by 49 CFR §1011.2(a)(7), which provides that the Board reserves to itself for consideration and disposition all appeals of initial decisions issued by the director of the Office of Proceedings under the authority delegated by §1011.7(b). This further rule states "[a]ppeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof." Inasmuch as Saratoga timely filed its appeal on December 5,<sup>1</sup> any reply would have been due 10 days later or Dec. 15. The Board should reject this Reply as noncompliant as it is almost one week late.

<sup>1</sup> Ten days after Nov. 23 would have been Dec. 3, a Saturday, so the deadline would have been Dec. 5.

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Substantively, Protect continues to raise issues of real estate law that are beyond the Board's jurisdiction and expertise. To the extent that Protect has any legitimate argument, the Board is not the proper place to air its grievances. Furthermore, under Board precedent, Saratoga is uncertain as to whether the holder of a railroad operating easement can limit the types of traffic handled over that easement absent some form of regulatory approval. Cf. Eric Strohmeier and James Riffin-Acquisition and Operation Application-Valstir Industrial Track In Middlesex and Union Counties, NJ, FD 35527, STB served October 20, 2011. In the event that the Board allows this reply, Saratoga requests a right of reply in order to insure a complete record.

Sincerely yours

  
John D. Heffner

JDH:jg

Cc: John W. Caffry, Esq.

Mr. Robert K. Davies